

REMARKS

Applicants have carefully reviewed the Office Action dated December 18, 2003. Claim 5 has been amended to correct a typographical error. This amendment does not narrow the scope of the claim. Claims 1-23 are pending in the present application and are subject to a restriction requirement under 35 U.S.C. § 121. In response, the Applicant respectfully traverses the restriction requirement as discussed in detail below. In the event the Examiner maintains the restriction requirement, the Applicant provisionally elects species I for prosecution on the merits. The claims readable on species I are claims 1-10, and 13-17, claims 1-9 being generic to all species.

Applicant respectfully traverses this restriction requirement as being improper for failure to demonstrate through explanation or otherwise the appropriateness of such a restriction. The Examiner has stated that the identified species are patentably distinct. The Applicant respectfully submits that such a statement, standing alone, cannot support a proper restriction requirement. Specifically, MPEP § 803 requires that each of two criteria be satisfied by the Examiner in support of the requirement for the restriction. These two criteria are:

(a) the inventions must be independent (See MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (See MPEP § 806.05 through § 806.5(i)); and

(b) there must be a serious burden on the Examiner if restriction is required." (See MPEP § 803.02, § 806.04 (a) through § 806.04(i), § 808.01, and § 808.02).

The fact that both criteria must be met is made even clearer by the following statement in the MPEP:

"If the search and examination of an entire application can be made without serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions."

(MPEP § 803 (emphasis added)). Thus, if the subject matter of the pending claims is such that there be no serious burden on the Office to search and examine all the pending claims at the same time, the Office is to do so, even if the pending claims are drawn to independent or distinct inventions (to which the Applicant makes no statement here).

Assuming, arguendo, that the Examiner has fulfilled the first of these two criteria, that the inventions must be independent or distinct as claimed as defined by MPEP § 802.01, the Examiner has failed to establish the existence of the second criteria for proper restriction – that there is a "serious burden" on the Examiner to search and examine the entire application before restriction is proper.

Under the guidelines of § 803, the Examiner must provide reasons and/or examples to support his conclusion that restriction is proper. Specifically, § 803 states that for the purposes of the initial requirement a serious burden on the Examiner may be prima facie shown if the Examiner shows by appropriate explanation either separate classification, separate status of the art, or a different field of search as defined in MPEP § 808.02. However, the Examiner has not shown through appropriate explanation or otherwise that the species identified are separately classified, have attained separate status in the art, or would require a different field of search. The only reason put forth in the Office Action is that the Examiner believes that the election of species requirement is of a complex nature. It is respectfully submitted that such a statement is not a sufficient reason to support a conclusion that the restriction is proper. Therefore, the Applicant is forced to conclude in the absence of any explanation going to the second of the two criteria required for proper requirement for restriction, that there is no serious burden on the Examiner justifying this requirement for restriction. Furthermore, the Patent Office has classified the published patent application in class 29, subclasses 745 and 33, which the Applicant respectfully submits shows that the species would require a different field of search.

Furthermore, it is respectfully submitted that the subject matter of the claims of species I, II, III, and IV overlap to such an extent that there is no serious burden on the Office to search and examine all of the pending claims at the same time. Specifically, claims 1 through 9 are generic to all species. Claims 10 and 13-17 are readable upon species I. Claims 11 and 22 are readable upon species II. Claims 12 and 23 are readable upon species III and IV. Claims 18 to 21 are generic to species II, III, and IV.

In view of the foregoing, it is respectfully requested that the Examiner withdraw the restriction requirement and that the Examiner conduct an examination on the merits of claims 1-21.

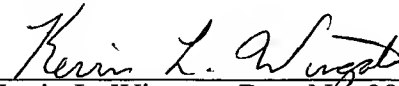
The Examiner asked that the Applicant provide reference numbers to all the claimed limitations as well as support in the disclosure for better clarity. It is respectfully requested that the Examiner point out where in 35 U.S.C. or 37 C.F.R. that requires the Applicant to provide these reference numerals as requested by the Examiner. It is noted that this is a requirement of European patent law and the patent laws of other countries, but it is

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respectfully submitted this is not a requirement of the United States' patent laws. Furthermore, providing such a table could result in limiting the scope of the claims to which the Applicant is fairly, legally, and equitably entitled. It is respectfully requested that the Examiner specifically point out where this requirement is found in the patent laws, or if this cannot be done, withdraw this requirement.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney

Respectfully submitted,



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